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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. WALTER BOLDEN, Defendant and Appellant.	B270226 (Los Angeles County Super. Ct. No. TA137302)

APPEAL from a judgment of the Superior Court of Los Angeles County, Pat Connolly, Judge. Affirmed.

H. Russell Halpern, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, Stacy S. Shwartz, Deputy Attorney General, for Plaintiff and Respondent.

Following a jury trial, defendant and appellant Walter Bolden was convicted of deliberate and premeditated murder (Pen. Code, § 187, subd. (a)).[1] The jury also determined defendant personally and intentionally used a handgun in the commission of the offense. (§ 12022.53, subd. (d).) Defendant admitted he had two prior residential burglary convictions within the meaning of sections 667.5, subdivision (b); 667, subdivision (a); and 667, subdivision (d). He was sentenced to 56 years to life in prison.[2]

Defendant contends the judgment should be reversed for several reasons. He maintains the trial court made an error of constitutional magnitude in that it deprived defendant of his right to a jury drawn from a fair cross-section of the community because, although the case was tried in a predominantly African-American community, there were only three African-American prospective jurors in the panel assigned to the trial court. Defendant also attributes evidentiary errors to the trial court, arguing the trial court improperly admitted evidence of defendant's (a) membership in a criminal street gang, and (b) possession of a handgun weeks prior to the murder. Finally,

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[1] All further statutory references are to the Penal Code, unless otherwise indicated.

[2] The trial court granted defendant's motion to dismiss the section 667, subdivision (d) prior conviction finding pursuant to *People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497, 504.

defendant contends the trial court committed instructional error by failing to sua sponte instruct the jury on (a) the lesser included offense of voluntary manslaughter, and (b) voluntary intoxication. We reject each contention and affirm the judgment.

FACTS[3]

A. Prosecution Case

On January 15, 2011, at approximately 10:00 p.m., Kelly Cole was driving home from a family gathering. As she passed by a residence on 111th Place in Los Angeles, she observed a large group of people gathered in the street. Cole did not see defendant with the group in the street. Five to ten minutes later, she heard gunshots. She subsequently discovered Travis Patterson (also known as "Pops" or "Pop") had been killed.[4] Defendant's DNA was on a cigar filter tip recovered from the crime scene.

Travis was shot six times from a distance of one-half inch to eighteen inches. Three shots were to his head and were fatal wounds.

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[3] The People alleged a gang enhancement (§ 186.22, subd. (b)(1)(C)) but the jury found the allegation not true. Accordingly, we do not summarize the gang evidence introduced at trial.

[4] Travis Patterson, shares his surname with one of his brothers—Marcus Patterson. We refer to each by their first name.

Approximately two hours before Travis was killed, Lawrence Sheffield (also known as "Brandon") was with Travis barbequing and drinking about eight or nine houses down the street from the murder scene. At some point Travis left the barbeque. While Sheffield was still at his barbeque, he heard gunshots. Sheffield then looked up the street and saw a body on the ground. He jogged to the scene and discovered Travis had been shot. Sheffield testified he was not with Travis when he was killed.[5]

Travis's brothers (Marcus Patterson and Lorenzo Jackson) testified Sheffield told them a different story. Soon after the killings, on separate occasions, Sheffield told Travis's brothers that defendant shot Travis. He informed Marcus that defendant and Travis argued, and defendant left the scene. Sheffield then explained that, while he (Sheffield) was standing on a corner near Travis's home, defendant returned to the location with a "big ass gun"[6] and shot Travis five or six times in a way that Sheffield described as "cold blooded."

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[5] Sergio Mendoza's testimony suggested Sheffield was not at his barbeque when the Travis was shot. Mendoza was near the location of the murder when he heard gunshots. About 15 seconds later, a car sped away and, within seconds of seeing the car leave, Mendoza reached Travis. At that point, Sheffield was already attending to Travis.

[6] Two weeks before Travis was killed, Marcus saw defendant with a "small" gun.

When Sheffield spoke to Jackson, he was slightly more specific about the nature of the argument and the location of the bullet wounds. Sheffield said, during the argument, Travis challenged defendant by saying, "What you want to do about it?" Defendant felt "embarrassed" and "disrespected" because he did not want to fight Travis and a number of girls were present. Defendant left the scene, returned with a gun, and shot Travis in the face. Sheffield repeated that account of the events to Jackson on two subsequent occasions.

Approximately three years after the murder, Antajuana Greene, the mother of defendant's child, spoke to defendant about a shooting. She directly asked him why he killed "the homie." Defendant responded, "Oh, well, I don't remember. I was drunk." He instructed her, "Don't snitch on me."[7] Greene was previously convicted for making criminal threats against defendant.

[7] In gang culture, a "snitch" includes people who testify against gang members. Gang members are known to beat or kill snitches.

B. Defense Case

Defendant's wife, Blair Sansom, described Greene as a loud and violent person who "constantly" threatened to fight her. On one occasion, she observed Greene strike defendant's vehicle with a metal object and, while screaming, try to "come after" defendant with the object in hand.

DISCUSSION

A. Jury Venire

The federal and state Constitutions guarantee the right to a jury composed of a representative cross-section of the community. (*People v. Jackson* (1996) 13 Cal.4th 1164, 1194.) "To establish a prima facie violation of the . . . fair cross-section requirement, defendant would have to demonstrate: (1) the group allegedly excluded was a distinctive group in the community; (2) the representation of that group in the venire from which his jury was selected was not fair and reasonable in relation to the number of such persons in the community; and (3) the underrepresentation was due to systematic exclusion of that group in the jury selection process. [Citations.]" (*People v. Rogers* (2006) 39 Cal.4th 826, 858.)

Defendant recognizes the case was tried in Compton then, without citation to anything, uses the following assumption as

the foundation for his argument. "The majority of the People living in Compton are [African-American]. Compton borders the neighborhood of Watts, which is also predominately [African-American]."

Building on this foundation he asserts he established, in the trial court, a prima facie violation of his right to a jury drawn from a fair cross-section of the community simply because only three of the prospective jurors "in the jury venire" were African-American. Defendant states he is challenging the composition of the venire, but that is not actually the case. "Although the terms are sometimes used interchangeably, [our Supreme Court has] explained that a '"venire" is the group of prospective jurors summoned from a larger list of eligible jurors,' while a '"panel" is the group of jurors from the venire assigned to a court for selection of the trial jury.' [Citation.]" (*People v. Rangel* (2016) 62 Cal.4th 1192, 1208 (*Rangel*).)

At trial, defense counsel stated, "I'm going to object—my objection is to this particular *panel*, for constitutional grounds. I don't think this panel—I believe I counted three African[-]American jurors." (Italics added.) On appeal, defendant references this objection as well as the specific comment by trial counsel that the number of prospective African-American jurors was limited to three. We will proceed as if defendant is raising the same claim that was raised in the trial court, i.e., a challenge

to the jury panel assigned to the court designated to conduct the trial.[8]

The Attorney General concedes African-Americans are a distinctive group as required by the first prong for a prima facie showing of a constitutional violation. We accept that concession. (See *People v. Burgener* (2003) 29 Cal.4th 833, 859.) The problems with defendant's position are with the second and third components of the prima facie showing.

As stated, prong two requires an assessment of the jury venire. But, because the objection in the trial court was to the constitution of the *panel*, there is nothing in the record indicating the number of people in the venire, the number of African-Americans in the venire, or the percentage of African-Americans in the community from where the pool of jurors were drawn to establish the venire. On this record, it is impossible to make a determination that, given the number of African-Americans in the community, the representation of African-Americans in the venire from which defendant's jury was selected was unfair and unreasonable.[9]

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[8] If defendant is challenging the composition of the venire, the argument is forfeited because he is doing so for the first time on appeal. (*People v. Fauber* (1992) 2 Cal.4th 792, 831.)

[9]We do not mean to suggest a defendant is precluded from challenging a jury panel based on a violation of the fair cross-section rule. Rather, "a challenge to the jury panel is always

Analysis of the third prong is similar. In this respect, if African-Americans were underrepresented in the panel from which the jury was ultimately selected, defendant must show that this was due to "systematic exclusion of that group in the jury selection process, as opposed to the random order in which members of the venire were called to the trial department for selection of the trial jury." (*Rangel*, *supra*, 62 Cal.4th at p. 1209, italics omitted.) Defendant does not address how he satisfied this requirement and we see nothing in the record to suggest he ever did so. It appears, as with the second prong, the focus in the trial court was limited to the panel and the composition of the venire was ignored.

Defendant has not demonstrated he was deprived of his right to a jury drawn from a fair cross-section of the community.

B. Gang Evidence

There was evidence defendant was a member of the Bounty Hunters criminal street gang. Defendant's claim that this evidence should have been excluded was not raised at trial and, in any event, is meritless.

As a consequence of defendant's failure to object to the admission of evidence that he was a member of a gang, his

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necessarily a challenge not to the composition of the panel but to the procedure by which the panel is composed." (*People v. De Rosans* (1994) 27 Cal.App.4th 611, 621.)

appellate contention is forfeited.[10] (Evid. Code, § 353, subd. (a) [a judgment shall not be reversed based on erroneous admission of evidence unless the record shows the party seeking reversal objected to the evidence on the specific ground raised]; *People v. Brown* (2003) 31 Cal.4th 518, 546-547 [defendant's claim that trial court's failure to limit prosecutor's use of gang evidence violated his constitutional rights forfeited for failure to object on those grounds].)

Nevertheless, the evidence of defendant's gang membership was relevant not only to the alleged gang enhancement (§ 186.22, subd. (b)(1)(C) [requiring proof, among other things, that the crime was committed to benefit a criminal street gang]) but it was independently relevant to explain the reluctance of some of the witnesses to testify and their inconsistent statements. (See Evid. Code, § 210 ["'Relevant evidence' means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action"]; see also *People v. Samaniego* (2009) 172 Cal.App.4th 1148, 1169 [gang evidence can be relevant to explain a witness's reluctance to testify or inconsistent statements].)

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[10] The absence of an objection is of no surprise as defendant was held to answer for the gang allegation and the People charged the allegation in the information.

For example, Cole testified she did not see defendant at the scene of the murder. But, in response to the prosecutor's question of whether she told a detective that she was afraid she would be killed if she went to court, Cole responded, "Yeah, because it's like I don't know why I'm here." Similarly, Sheffield's testimony that he was not present when Travis was shot differed dramatically from the statements he made to Marcus and Jackson that incriminated defendant. When the prosecutor asked Sheffield (a former member of the Bounty Hunters) what would happen to someone who was a "snitch," Sheffield indicated that person could be "beat up" or "killed." In light of the evidence that a snitch includes someone who testifies against a gang member, and that snitches subject themselves being beaten or killed, defendant's membership in the Bounty Hunters appropriately allowed the jury to view the reluctance of witnesses to testify and their inconsistent statements through the appropriate lens.

C. Gun Possession

Defendant devotes six lines of his opening brief to arguing the judgment should be reversed because the trial court erroneously allowed the introduction of evidence that he was seen carrying a gun two weeks prior to the killing of Travis. He cites Evidence Code section 352 and concludes that the evidence of his

gun possession had "little if any probative value" and was "clearly outweighed by the prejudiced [*sic*] that would naturally flow from it."

The brief argument is flawed and we apply rudimentary principles of appellate review in disposing of it. Again, we begin with forfeiture. Defendant did not object to the evidence, thereby forfeiting the claim on appeal. (Evid. Code, § 353, subd. (a); *People v. Zamudio* (2008) 43 Cal.4th 327, 354.)

In addition, defendant's argument is too cursory and underdeveloped to warrant appellate relief. In order to establish the evidence should have been excluded under Evidence Code section 352, he is required to demonstrate it tended to evoke, in the eyes of the jury, a unique emotional bias against him. (*People v. Branch* (2001) 91 Cal.App.4th 274, 286.) Beyond identifying the undue prejudice as "naturally flow[ing]" from the evidence, he makes no further assessment of the undue prejudice prong. This is inadequate, and constitutes another basis to reject the contention. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [appealing party required to make a reasoned legal argument]; *Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1 [undeveloped argument may be treated as abandoned].)

In the same vein, defendant fails to address his obligation to demonstrate that, without the alleged evidentiary error

committed by the trial court, there was a reasonable possibility the result of his trial would have been different. (See *People v. Hill* (2011) 191 Cal.App.4th 1104, 1122 [appealing party has the burden of establishing improperly admitted evidence was prejudicial]; see also *People v. Lenart* (2004) 32 Cal.4th 1107, 1125 [alleged improper admission of gun-related evidence subject to analysis of prejudice].) We are not permitted to reverse a judgment of conviction based on the erroneous admission of evidence unless that showing of prejudice has been made. (Evid. Code, § 353, subd. (b).) Regardless, given the statements Sheffield made to Travis's brothers, and the testimony of Greene that defendant explained the killing away with his supposed intoxication, we hold that possibility does not exist.

D. Voluntary Manslaughter

"'"Manslaughter, an unlawful killing without malice, is a lesser included offense of murder." [Citations.] "Although . . . section 192, subdivision (a), refers to 'sudden quarrel or heat of passion,' the factor which distinguishes the 'heat of passion' form of voluntary manslaughter from murder is provocation.'" [Citation.] 'To be adequate, the provocation must be one that would cause an emotion so intense that an ordinary person would simply *react*, without reflection. . . .[T]he anger or other passion must be so strong that the defendant's reaction bypassed his

thought process to such an extent that judgment could not and did not intervene.' [Citation.] ""[I]f sufficient time has elapsed for the passions of an ordinarily reasonable person to cool, the killing is murder, not manslaughter."" [Citation.]" (*Rangel*, *supra*, 62 Cal.4th at pp. 1225.) When a defendant is prosecuted for first degree murder, the trial court has a sua sponte duty to instruct the jury on the uncharged lesser included offense of voluntary manslaughter, if there is substantial evidence that the defendant is guilty only of that lesser offense. (*Id*. at pp. 1224-1225.)

Focusing on the evidence that he was embarrassed when Travis challenged him to a fight, defendant argues a jury could have concluded such embarrassment caused him to rashly shoot Travis. Two points are worth mentioning. First, the evidence demonstrated defendant argued with Travis, left the scene, returned with a weapon, and shot Travis in manner that was described by Sheffield as "cold blooded." This does not suggest defendant was in a fit of anger when he shot Travis. Second, embarrassment or humiliation falls woefully short of an emotion so intense that an ordinary person would immediately kill without reflection. Indeed, appellate courts have routinely declined to require a jury instruction on voluntary manslaughter in similar circumstances. (See, e.g., *People v. Enraca* (2012) 53 Cal.4th 735, 743-744, 759 [insults]; *People v. Avila* (2009) 46

Cal.4th 680, 706-707 [same]; *People v. Manriquez* (2005) 37 Cal.4th 547, 585-586 [taunting]; *People v. Lucas* (1997) 55 Cal.App.4th 721, 739-740 [smirking, laughing, "dirty looks," yelling names, intimidation, challenging defendant to pull the car over].) The evidence was insufficient to require the trial court to sua sponte instruct the jury with heat of passion voluntary manslaughter.

E. Voluntary Intoxication

Defendant argues the trial court erred by failing to instruct the jury that defendant's voluntary intoxication (see, e.g., CALCRIM No. 3426; CALJIC No. 4.21.1) could be considered in determining whether defendant acted with the particular intent or mental state required for premeditated first degree murder. Defendant's claim is not supported by citation to the record.

Because defendant does not cite anything in the record demonstrating he requested the instruction, and we are unable to find anything to suggest a request was made, we presume defendant's position is that the trial court had a sua sponte duty to instruct the jury in this regard. But, this argument has been flatly rejected by our Supreme Court: "[A] trial court has no sua sponte duty to give a 'pinpoint' instruction on the relevance of evidence of voluntary intoxication . . . ." (*People v. Pearson* (2012)

53 Cal.4th 306, 325; see also *People v. Saille* (1991) 54 Cal.3d 1103, 1121.)

The absence of record references damages defendant's argument in another way. He does not cite anything in the record to support such a voluntary intoxication and, in fact, does not tell us what evidence he believes supported such an instruction. These faults are significant. We are not required to comb the appellate record for facts that support the claims of an appealing party. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246; *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.) As a result, the contention is waived. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546.)

If we were to venture a guess, it could be that defendant believes Greene's testimony warranted the instruction. Greene testified that, three years after Travis was killed, defendant told her he could not remember why he committed the crime, noting he was "drunk" at the time. That testimony is insufficient to require an instruction on voluntary intoxication. A voluntary intoxication instruction is warranted only if the evidence shows that the defendant "became intoxicated to the point he failed to form the requisite intent or attain the requisite mental state." (*People v. Ivans* (1992) 2 Cal.App.4th 1654, 1661.) Defendant did not tell Greene he was too intoxicated to form the requisite mental state, he simply said he was intoxicated to the point that

he could not remember, three years later, the reason why he committed the crime. Greene's testimony did not require the trial court to instruct on involuntary intoxication.

DISPOSITION

The judgment is affirmed.

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KUMAR, J*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

* Judge of the Superior Court of the County of Los Angeles, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.